

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

NANCY KEENAN

STATE OF MONTANA

* * * * *

AUDREY HILL,

Appellant,

VS .

TRUSTEES, RICHLAND COUNTY,
SCHOOL DISTRICT NOS. 86 &

DECISION

OSPI 170-89

* * * * *

STATEMENT OF THE CASE

Audrey Hill (hereinafter "Hill") was a nontenured teacher at Lambert School, having taught band for the previous three years. On April 18, 1989, Hill was notified that her teaching contract could not be renewed. On that same day, Hill requested, in writing, a statement of the reasons her contract was not renewed. By letter dated April 24, 1989, the school board responded with the following statement of reasons:

1. Lack of improvement by the band toward playing up tempo, livelier sounding music at school functions.
2. The fact that students are dropping out of band and not returning.
3. Community members have commented to Board Members that concerts are boring, stuffy and uninteresting.
4. The Board feels that the music program needs to take

1 a different direction.

2 Hill filed an appeal with the Richland County Superintendent
3 on May 17, 1989. On May 23, 1989, the County Superintendent
4 issued the following "Judgment":

5 On or about May 18, 1989, the undersigned received from
6 the petitioner by certified mail the petitioner's appeal.
7 Attached to said appeal was a copy of a letter addressed
a to petitioner dated April 24, 1989. The letter was from
the respondent and set forth the reasons why petitioner's
teaching contract was not renewed.

9 After receiving said documents, the undersigned reviewed
them carefully, as well as the applicable law. (Bridger
10 Education Association v. Board of Trustees, 3 Ed. Law 99;
Schulte v. School District No. 24, 5 Ed. Law 13; and Allen
11 v. Roosevelt County School District No. 3, 5 Ed. Law 16.)
After reviewing said materials;

12 IT IS THE JUDGMENT of this County Superintendent that the
13 reasons given by the respondent in its letter to the
petitioner dated April 24, 1989, do tell the petitioner
14 in a general manner what undesirable qualities merit its
refusal to enter into another contract. Therefore, the
15 petitioner's appeal is denied.

16 Hill subsequently filed a Notice of Appeal dated June 2, 1989,
17 with this Superintendent. Hill alleges as follows:

18 Appellant asserts that her constitutional rights of due
process, specifically to have the opportunity to meet the
19 reasons for her non-renewal and be given the opportunity
to rebut the same, have been violated. These violations
20 were occasioned by the County Superintendent's refusal to
hold a hearing on matters at issue and issue written
21 findings of fact and conclusions of law, and hence the
summary nature of her decision.

22 DECISION AND ORDER

23 The State Superintendent of Public Instruction has
24 jurisdiction of this appeal under Section 20-3-107(1)(a), MCA.
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1 A nontenured teacher has very limited rights to appeal
2 his/her nonrenewal of employment by the board of trustees of a
3 school district. In accordance with Section 20-4-206, MCA, the
4 nontenured teacher may appeal if the board fails to respond to a
5 timely request for written reasons. In addition, the nonrenewed
6 nontenured teacher also has the right to an evidentiary hearing
7 before the County Superintendent of Schools to prove that the
8 school board abused its discretion in reaching its decision not
9 to renew the teacher's contract.

10 This matter is remanded to the County Superintendent of
11 Schools of Richland County with instructions to hold an
12 evidentiary hearing in accordance with Rules of Procedure for all
13 School Controversy Contested Cases, 10.6.101 et seq.
14 Administrative Rules of Montana, and issue a final order in
15 accordance with the decision in this appeal. The County
16 Superintendent of Schools shall admit evidence relevant to
17 deciding the following issue: Whether the Board of Trustees of
18 Richland County School District No. 86 & 4 abused its discretion
19 when it decided not to renew Hill's teaching contract for the
20 reasons stated in its letter of April 24, 1989.

21 MEMORANDUM OPINION

22 The Montana Supreme Court in Bridger Education Association
23 v. Board of Trustees, 41 St. Rep. 533 (1984) concluded the
24 legislature created a legal privilege for nontenured teachers
25

1 when it amended Section 20-4-206, MCA, requiring that the board
2 of trustees furnish a written statement of the reasons for
3 nonrenewal within 10 days of the receipt of a written request
4 from the nonrenewed teacher. The Court concluded the legislature
5 "must have intended to grant something of meaning when the
6 requirement for stating reasons, upon request, was written into
7 the statute. The specified reason 'to find a better teacher'
8 serves no purpose."

9 Since the Bridger decision, school districts have argued that
10 a nonrenewed nontenured teacher is not entitled to an **evidentiary**
11 **hearing** before the county superintendent under the Rules of School
12 Controversy promulgated by the State Superintendent and set forth
13 in Title 10, Chapter 6, subchapter 1 of the Administrative Rules
14 of Montana (ARM). County Superintendents and the former State
15 Superintendent accepted jurisdiction over appeals from nonrenewed
16 nontenured teachers for the purposes of determining whether a
17 board of trustees gave the teacher "written reasons" upon a timely
18 request and whether the given reasons meet the "Bridger test."
19 However, County Superintendents have held and the former State
20 Superintendent affirmed that a nonrenewed nontenured teacher is
21 not entitled to present evidence in accordance with 10.6.116,
22 ARM, to test the veracity of the stated reasons. Wanty v.
23 Trustees, Carbon County School District No. 34-3, 5 Ed.Law 10
24 (OSPI 1986) and Schulte v. School District No. 24, 5 Ed. Law 13
25 (OSPI 1986). Thus, there has been created an anomaly--a contested

1 case procedure where the parties cannot present evidence.

2 The main argument of Respondent Board of Trustees is based on
3 the conclusion that permitting nonrenewed nontenured teachers a
4 right to an evidentiary hearing is akin to granting "instant
5 tenure." The nonrenewed nontenured teachers argue that clearly
6 the legislature did not intend that a board of trustees could rely
7 on its creative imagination to "concoct" reasons for its decision
8 not to renew a nontenured teacher's contract.

9 This State Superintendent is persuaded that it was not the
10 intent of the legislature to insulate the reasons required under
11 Section 20-4-206, MCA, from **all** scrutiny. Likewise, she is
12 persuaded that the legislature did not intend to require a board
13 of trustees **to** prove "good cause" for nonrenewal of a nontenured
14 teacher's contract. As respondent boards argue, that would create
15 "instant tenure." Are these the only alternatives? No. This
16 Superintendent believes there is another alternative.

17 One of the official duties of the board **of** trustees is the
18 employment of teachers for the district. Section 20-3-324(1), MCA
19 states:

20 As prescribed elsewhere in this title, the trustees of
21 each district shall:

22 (1) employ or dismiss a teacher, principal, or
23 other assistant upon the recommendation of the
24 district superintendent, the county high
25 school principal, or other principal as the
board considers necessary, accepting **or**
rejecting any recommendation as the trustees in
their sole discretion determine, in accordance
with the provisions of Title 20, chapter 4.

1 In addition, a board's employment decisions must comply with
2 the specific requirements of Title 20, Chapter 4, Part 2, MCA.
3 Section 20-4-206, MCA, applies to the nonrenewal of a nontenured
4 teacher's contract. Under these statutes the board of trustees
5 of a school district is permitted to exercise its **discretion** in
6 making nontenured teacher employment decisions. However, even
7 discretion has its limits. The Montana Supreme Court discussed
8 **abuse of discretion** in Jeppeson v. State of Montana, Department
9 of State Lands, 40 St. Reporter 1272, 667 P.2d 428 (1983) and
10 stated:

11 At the outset, we reemphasize that the discretionary
12 powers vested in the respondent department are broad in
13 scope. Abuse of discretion, on the other hand, is not
14 subject to as broad an interpretation. This Court has
15 held that abuse of discretion involves: "not merely an
16 error in judgment, but perversity of will, prejudice,
17 passion, or moral delinquency, but it does not necessarily
18 imply wrong-doing or a breach of trust, or import bad
19 faith; it conveys, rather the idea of acting beyond the
20 limit of discretion; the disregard of the evidence
21 adduced; the basing of a decision upon incompetent or
22 insufficient evidence; an exercise of discretion to an end
23 or purpose not justified by, and clearly against, reason
24 and evidence; a clear error in law in the circumstances.
25 [Citations omitted.]

19 **ID** at 1277 (citing Taylor v. County commissioners, 128 Mont.102,
20 111 and 112 (1954) with approval.)

21 This Superintendent believes a board of trustees has broad
22 discretionary power when deciding not to renew a nontenured
23 teacher's contract. She is also of the opinion that a board of
24 trustees of a school district can abuse its discretionary power.
25 It is her opinion that a nonrenewed nontenured teacher has a right

1 to an evidentiary hearing to prove that the board of trustees
2 abused its discretion. This is a heavy burden.

3 In regard to the board's decision not to renew the contract
4 of a nontenured teacher, the board is entitled to the disputable
5 presumption that it acted with discretion. In an appeal by a
6 nontenured teacher, the board of trustees is not required to prove
7 that it had "good cause" for the nonrenewal. The teacher has the
8 burden of proving that the board abused its discretion in deciding
9 not to renew the nontenured teacher's contract.

10 This Superintendent believes that providing a nonrenewed
11 nontenured teacher the opportunity to prove that a board of
12 trustees abused its discretion will put boards of trustees on
13 notice that they are not free to make arbitrary and capricious
14 decisions. Such a hearing will help insure that the reasons relied
15 upon by a board to decide not to renew a nontenured teacher's
16 contract do, in fact, inform the teacher of "the undesirable
17 qualities which merit a refusal to enter into a further contract."

18 The Supreme Court in Jeppeson used the following phrases to
19 describe abuse of discretion: "the disregard of the **evidence**
20 adduced; the basing of a decision upon incompetent or insufficient
21 **evidence**; an exercise of discretion to an end or purpose not
22 justified by, and clearly against, reason and **evidence**; a clear
23 error in law in the **circumstances**." (Emphasis added.) Only through
24 a hearing process that admits relevant evidence will the trier of
25 fact be able to decide whether a board of trustees abused its

1 discretion in not renewing the contract of a nontenured teacher.

2 The remaining issue in this appeal is whether the hearing
3 should be held before a court of competent jurisdiction or a
4 County Superintendent in accordance with rules adopted by the
5 State Superintendent under Section 20-3-107, MCA.

6 Easton v. Trustees, Missoula County School District No. 11,
7 5 Ed. Law 190 (OSPI 1986); and Cummings v. Missoula County
8 Trustees, 6 Ed. Law 18 (OSPI 1987) have been cited for the
9 contention that a nontenured teacher has "recourse in the judicial
10 forum" if the teacher believes the reasons given the board are
11 false. It is not prudent to require a teacher to file an action
12 and pursue a remedy in two separate forums, administrative and
13 judicial, to obtain a complete remedy. A nontenured teacher would
14 have to file an appeal with the County Superintendent to determine
15 whether or not the written reasons met the "Bridger test" as well
16 as file a writ in district court to have the court determine
17 whether reasons given by the board were true.

18 Section 20-3-107(3), MCA, states:

19 In order to establish a uniform method of hearing and
20 determining matters of controversy arising under this
21 title, the superintendent of public instruction shall
22 prescribe and enforce rules of practice and regulations
for the conduct of hearings and the determination of
appeals by all school officials of the state.

23 In addressing the jurisdiction of a County Superintendent of
24 Schools, the Montana Supreme Court held that under Section 20-3-
25 210, MCA, the County Superintendent must hear and decide all

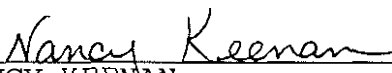
atters of controversy arising as a result of decisions of the board of trustees. The court held that as a general rule a claimant in the school system must exhaust administrative remedies before filing a complaint or petition in district Court. This general rule has three limited exceptions. These exceptions are situations where state agencies have been directly granted primary jurisdiction, where the matter is governed by a specific statute or where the board has acted without or in excess of its jurisdiction. Canyon Creek Education Assoc. v. Board of Trustees, Yellowstone County School District No. 4, 47 St. Rptr. 93 (1990), explaining Throssell v. Board of Trustees of Gallatin County School District, 45 St. Rptr. 1228 (1988).

This State Superintendent believes that an appeal by a nontenured teacher should be heard and decided by a County Superintendent in accordance with the rules of controversy adopted under Section 20-3-107, MCA. She believes the legislature intended to establish a uniform method of hearing and deciding school controversies. There is no statutory grant of jurisdiction to a district court to hear a nontenured teacher's allegation that the reasons given by a board of trustees for nonrenewal are false. In order to get a hearing before a district court, the nontenured teacher would have to rely on an extraordinary writ and contend that there is not a plain, speedy, and adequate remedy in the ordinary course of law.

In summary, this decision does not grant "instant tenure" to

1 nontenured teachers. It does provide an opportunity for an
2 evidentiary hearing before a County Superintendent at which the
3 nonrenewed nontenured teacher has the burden of proving that the
4 board of trustees abused its discretion in arriving at the
5 decision to not renew the teacher's contract. This is clearly
6 different from an appeal of a board decision by a terminated
7 tenured teacher. When a tenured teacher appeals the board of
8 trustees termination decision, the board, not the teacher, has
9 the burden of proving that it had "good cause" for the
10 termination. The nontenured teacher has the burden of proof
11 in an abuse of discretion hearing

12 DATED this 23 day of March, 1990.

13 
14 NANCY KEENAN

15 10.6.128 APPELLANT PROCEDURE - DECISION (1) The decision
16 and order of the superintendent of public instruction shall be
17 final, subject to the proper legal remedies in the state/federal
18 courts. Such proceedings shall be commenced no later than 60 days
19 after the date of the decision and order of the state
20 superintendent of public instruction.
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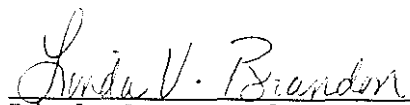
CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on the 23rd day of March, 1990, a true and exact copy of the foregoing Decision was mailed, postage prepaid to the following:

John K. Addy
MATOVICH, ADDY & KELLER, P.C.
313 Hart-Albin Building
Billings, MT 59101

Charles E. Erdmann
Attorney at Law
P.O. Box 5418
Helena, MT 59604

Joan A. Ritter
Richland County Superintendent
201 West Main
Sidney, MT 59270



Linda V. Brandon
Paralegal Assistant
Office of Public Instruction